

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

November 3, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: May 13, 2008

Case Number: TSO-0632

This Decision considers the eligibility of XXXXX (the individual) to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As I explain below, the Department of Energy (DOE) should not restore the individual's suspended access authorization.

I. Background

In May 1973, the DOE granted the individual an access authorization. DOE Ex. 2 (DOE Case Evaluation, Oct. 22, 2007). In May 1978, the DOE terminated the individual's access authorization, although not for cause, and in July 1983 the DOE reinstated it.

In April 2001, the individual drank alcohol, assaulted her son, and was arrested. *Id.* She stated that she drinks to cover her pain and that alcohol makes her violent. DOE Ex. 30 (Personnel Security Interview [PSI], June 21, 2001). The DOE referred the individual to a DOE-consultant psychologist, who diagnosed her with Major Depression (Recurrent Moderate) and Alcohol Abuse. DOE Ex. 15 (Psychological Case Evaluation, Jan. 29, 2002). As a result, in February 2002, the DOE suspended the individual's access authorization and she requested a hearing. *See* DOE Ex. 35 (Statement of Charges, Feb. 15, 2002); DOE Ex. 34 (Hearing Officer's Decision, May 20, 2003).

In May 2003, a Hearing Officer found that the individual's access authorization should not be restored. *Id.* The individual appealed. DOE Ex. 33 (Individual's Written Request for Further Review, Oct. 3, 2003). In October 2003, she signed an affidavit stating that she "[has] a long term commitment to sobriety and will not consume alcohol . . . for the remainder of [her] life." *Id.* In November 2004, the appeal panel requested a further psychological evaluation, and the psychologist determined that the individual had rehabilitated herself from her Major Depression and Alcohol Abuse. DOE Ex. 14

(Psychological Case Evaluation, Dec. 3, 2004). In February 2005 the DOE reinstated her access authorization. DOE Ex. 32 (Personnel Security Dept. Memo., Feb. 7, 2005).

In April 2007, the individual again drank alcohol because it was “a fast and easy . . . escape.” DOE Ex. 29 (PSI, Sept. 13, 2007, p. 90). In August 2007, she drank alcohol, smashed two vehicles with a baseball bat, and was arrested for vandalism. *Id.* Soon thereafter, her psychologist diagnosed her with Adjustment Disorder with Anxiety. DOE Ex. 13 (Psychologist Letter, Aug. 23, 2007). The individual told her psychologist that alcohol brings out her anger. DOE Ex. 29 (PSI, Sept. 13, 2007, p. 105). Her psychologist advised her not to consume alcohol. DOE Ex. 13 (Psychologist Letter, Aug. 23, 2007).

The individual’s arrest prompted the DOE to conduct two PSI’s and refer the individual to a DOE-consultant psychologist.¹ DOE Ex. 2 (DOE Case Evaluation, Oct. 22, 2007); *see also* DOE Exs. 12 (Psychological Case Evaluation, Dec. 17, 2007), 28 (PSI, Oct. 17, 2007), and 29 (PSI, Sept. 13, 2007). In December 2007, the DOE-consultant psychologist diagnosed the individual with Alcohol Abuse. DOE Ex. 12 (Psychological Case Evaluation, Dec. 17, 2007).

In March 2008, the DOE issued the individual a Notification Letter with a Statement of Charges detailing three security concerns that caused the DOE to suspend her access authorization. *See* DOE Ex. 1 (Statement of Charges, Mar. 20, 2008). First, the individual’s Alcohol Abuse constitutes a “Criterion J” security concern. *Id.*; *see also* 10 C.F.R. § 710.8(j). Second, the individual’s Alcohol Abuse diagnosis raises a “Criterion H” security concern. DOE Ex. 1 (Statement of Charges, Mar. 20, 2008). That is, Alcohol Abuse “is an illness or mental condition which, in the opinion of a [psychologist] causes, or may cause, a significant defect in the judgment or reliability [of the individual].” *Id.* (quoting 10 C.F.R. § 710.8(h)).

In addition to the individual’s Alcohol Abuse diagnosis, the Statement of Charges cited the following facts to support its Criterion J and Criterion H security concerns:²

1. The individual has not complied with treatment recommendations, including abstaining from alcohol and attending Alcoholics Anonymous (AA);
2. Despite the individual’s statement that she would abstain from alcohol, she consumed alcohol twice in 2007, the last episode resulting in an alcohol-related arrest in August 2007;

¹ The Statement of Charges refers to the DOE consultant as a psychiatrist when in fact he is a psychologist. DOE Exs. 1 (Statement of Charges, Mar. 20, 2008) and 12 (Psychological Case Evaluation, Dec. 17, 2007) (showing the title “psychologist” on the consultant’s letterhead).

² The DOE did not cite the individual’s Adjustment Disorder with Anxiety diagnosis or her Post-Traumatic Stress Disorder symptoms (discussed below) as bases for its Criterion H concern. However, I discuss them because the DOE-consultant psychologist stated that both illnesses may cause a significant defect in judgment and reliability. Transcript at 165-168. Also, they impact the individual’s rehabilitation from her Alcohol Abuse diagnosis. *Id.* at 187.

3. The individual has insufficient treatment progress and time in abstinence to “demonstrate a genuine and full recovery;” and
4. The individual’s behavior that resulted in her August 2007 arrest “represents a serious loss of control of anger, which was probably affected by consuming alcohol and has caused [the individual] substantial adverse consequences. . . .”

DOE Ex. 1 (Statement of Charges, Mar. 20, 2008).

The third security concern that the Notification Letter raises is a “Criterion L” security concern. Criterion L concerns “unusual conduct or . . . circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation or duress which may cause the individual to act contrary to the best interests of national security. Such conduct . . . include[s] . . . [a] violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.” 10 C.F.R. § 710.8(l). The Statement of Charges cited the following facts to support its Criterion L security concern:

1. In an October 3, 2003 affidavit, the individual stated that she would abstain from alcohol. In February 2005, the DOE relied upon this affidavit to restore her access authorization. The individual consumed alcohol in April and August 2007, resulting in her vandalism arrest.

DOE Ex. 1 (Statement of Charges, Mar. 20, 2008).

The DOE-consultant psychologist’s report that prompted the Notification Letter explained how he believes the individual must demonstrate rehabilitation. For eighteen months the individual must abstain from alcohol and undergo “monitored and sustained” treatment, including (i) documented AA participation twice a week; (ii) “regular involvement in psychotherapeutic counseling;” (iii) compliance with psychiatric medication; and (iv) random alcohol testing. If the individual attempts abstinence without treatment, she must demonstrate at least thirty months’ abstinence, verified by random testing. DOE Ex. 12 (Psychological Case Evaluation, Dec. 17, 2007).

The individual requested a hearing to respond to the DOE’s security concerns, which I conducted on August 6, 2008. An attorney represented the individual. The individual testified and called the following witnesses: her psychologist, her co-worker, and her significant other. The DOE counsel called the DOE-consultant psychologist.

II. Hearing Testimony

A. The Individual

From March 2002 until the time of the hearing, the individual consumed alcohol on two occasions. Tr. at 14, 17, 21, 28. The first incident was in April 2007. *Id.* at 17. Stress from her son not graduating high school drove her to have two drinks. *Id.* at 17, 47.

The second incident was in August 2007, when she drank two ounces of vodka. *Id.* at 21, 52. The individual fell asleep after drinking. *Id.* at 54. She woke up to the sounds of her son and his girlfriend in her son's bedroom and became angry. *Id.* at 54, 56. She took a baseball bat and smashed the windows in her son and girlfriend's vehicles. *Id.* at 55. The individual has taken full responsibility for damaging the vehicles and has paid restitution. *Id.* at 24, 79.

Stress building up from her son over a two-year period inspired the individual's August 2007 drink. *Id.* at 51. Her son and his girlfriend caused her stress by violating her rules – spending time in his bedroom with the door closed, having his girlfriend over when the individual is not home, leaving personal items in the bathroom, his girlfriend rummaging her closet, and his girlfriend re-arranging the individual's personal items, etc. *Id.* at 21, 22.

The individual has not consumed alcohol since August 2007, and her goal is to abstain from alcohol for the rest of her life. *Id.* at 28, 31. To that end, she plans to continue receiving counseling from her psychologist, who she has been seeing twice a week since April 2007. *Id.* at 18, 34, 49, 75. She began participating in AA in earnest in April 2008. *Id.* at 77. She previously did not want to participate in AA, but has recently changed her mind because there are many women at AA and hearing how others cope helps her. *Id.* at 29, 30, 77. Also, the individual initially had an inappropriate AA sponsor, but now she has an appropriate sponsor. *Id.* at 77.

The individual has also taken steps to reduce stress, which caused her Adjustment Disorder with Anxiety. Generally speaking, she reduces stress by reading, taking Prozac, and praying. *Id.* at 65, 76. She attends church regularly, where she is president of the women's society. *Id.* at 78.

The individual has also reduced stress by dealing directly with her son. After the August 2007 incident, her son went to live with a relative. *Id.* at 24. After her son came home, the individual adopted strategies from her psychologist, including increased counseling and having her son sign "contracts" to encourage and reward positive behavior. *Id.* at 19, 20, 25, 67. Her son now respects her and almost always follows her rules. *Id.* at 68, 69. They communicate much better and, as a result, their relationship has improved. *Id.* at 35, 74. He no longer stays out all weekend and his peer group is now "a little better." *Id.* at 72.

The individual's stress from her son has also decreased because she has stopped worrying about him; she has "let go." *Id.* at 35, 73. She no longer has a problem controlling her anger. *Id.* at 80.

The individual testified regarding the affidavit that she signed, stating that she would no longer drink. When the individual signed it, she believed that she could stay sober. *Id.* at 15. She knew she had a clearance when she signed it and honestly believed that she would not drink again. *Id.* at 65, 80. But she acknowledged violating her promise to the DOE. *Id.* at 66.

B. The Individual's Significant Other

The individual and her significant other have maintained a relationship for eighteen years. *Id.* at 196. They speak every day and see each other twice a week. *Id.* at 205.

The individual does not keep alcohol in the house, nor does she consume alcohol at restaurants and social events. *Id.* at 200, 201. Alcohol is not a problem for her. *Id.* at 206.

The individual's son caused the individual stress during the period preceding the individual's arrest in August 2007. *Id.* at 197. Her son now usually complies with her rules and she has less stress than she did in August 2007. *Id.* at 203, 204.

C. The Individual's Co-Worker

The individual's co-worker is a DOE employee of twenty-four years. *Id.* at 144. He has known the individual his entire career. *Id.* at 145.

The individual's co-worker is trained to identify the signs of problem behavior, including alcohol abuse. *Id.* at 144. He has not identified problem behavior with the individual, other than excessive use of leave. *Id.* at 147. He considers her to be an able, capable employee. *Id.* at 148.

D. The Individual's Psychologist

In March 2007, the individual's psychologist diagnosed her with Adjustment Disorder with Anxiety because her son caused her stress. *Id.* at 90. The individual's psychologist also diagnosed the individual with Alcohol Abuse because she was drinking to "medicate" her anxiety and to "diminish" her emotions. *Id.* at 87, 129, 131.

The individual's psychologist counseled her to attend AA. The individual resisted, even after her vandalism arrest. *Id.* at 95, 127. She did not want to hear other peoples' problems. *Id.* at 95. In April 2008 the individual fully accepted her Alcohol Abuse and committed to AA. *Id.* at 162-163. She now attends and learns from other peoples' experiences. *Id.* at 103.

The individual has also addressed her Alcohol Abuse through counseling, which she has received from her psychologist every week since August 2007, when she erupted and damaged the vehicles. *Id.* at 94. The individual showed signs of Post Traumatic Stress Disorder (PTSD) from stress from her son, although the individual's psychologist did not diagnose her with PTSD. *Id.* at 83, 85, 166. Although the individual's intoxication did not trigger her PTSD-like symptoms, it decreased her judgment and contributed to her loss of control. *Id.* at 103, 104.

The psychologist began treating the individual with Eye Movement Desensitization and Processing (EMDR), a therapy for trauma. *Id.* at 97; *see also* Oct. 6, 2008 Post-Hearing Submission "Information For Professionals: EMDR." EMDR has helped the individual reduce stress. *Tr.* at 101. She no longer Exhibits signs of PTSD. The individual's chances of experiencing an emotional and physical outburst related to her PTSD – and therefore suffer an Alcohol Abuse relapse – are "very substantially diminished." *See id.* at 107, 124-126.

Since August 2007, the individual has abstained from alcohol. *Id.* at 105. Meanwhile, her AA participation, coupled with treating "the underlying problem" with EMDR, has rehabilitated the individual from her Alcohol Abuse, which is in "early full remission." *Id.* at 104, 106, 114, 115, 137. At the end of August 2008, the individual will be in "sustained remission." *Id.* at 138. She does not report alcohol cravings. *Id.* at 158.

E. The DOE-Consultant Psychologist

The DOE-consultant Psychologist opined that the individual recovered from her Adjustment Disorder with Anxiety by working with her psychologist. *Id.* at 189. Nor does the individual show signs of PTSD. *Id.* at 166. The individual's reaction to stress is no longer out of proportion to the stress. Also, her social and occupational functioning is not impaired. *Id.* at 167.

Regarding the individual's Alcohol Abuse diagnosis, her progress towards recovery has been "exemplary." *Id.* at 180. Her coping skills have improved, she has a strong social support system, and she is motivated to get well. Also, objective medical tests show that she has not been abusing alcohol or illegal drugs. *Id.* at 175, 177, 218. Her prognosis for recovery has improved. *Id.* at 189.

The DOE-consultant psychologist clarified, however, that the individual still meets the diagnosis for Alcohol Abuse, which substantially impairs her judgment and reliability. *Id.* at 168, 222. She meets the diagnosis because even though she has not consumed a large volume of alcohol, consuming alcohol has been a "long-standing" and "substantially destructive problem in her life." *Id.* at 169, 176. The individual's Adjustment Disorder with Anxiety diagnosis "increases the gravity" of her Alcohol Abuse diagnosis. *Id.* at 169. Also, because the individual took a "long time" to participate in AA, she is "early" in her recovery. *Id.* at 176, 182.

Several reasons cause the individual's risk of relapse to be "medium." *Id.* at 182. First, alcohol disorders are relapsing conditions and the individual has demonstrated that she can relapse after a significant period. *Id.* at 169, 173, 182. Second, she has historically resisted treatment. *Id.* at 174, 176. Third, she is prone to anxiety and stress and her son – the cause of her stress – lives at home. *Id.* at 175, 192.

In order to show rehabilitation, the individual must abstain from alcohol while seriously participating in AA, and undergoing psychological counseling and random alcohol testing. *Id.* at 179. The individual must engage this treatment plan for twelve months and should engage this plan for an extra six months, given her history of relapse. *Id.* at 180. Because the individual committed to AA only four months prior to the hearing, she must continue AA and counseling for another eight to fourteen months, while undergoing random alcohol testing. *Id.* at 181, 189, 223.

The individual's psychologist has focused on the individual's Adjustment Disorder with Anxiety. *Id.* at 185. While this has a "substantial bearing" on her Alcohol Abuse diagnosis, she has been "somewhat remiss in not emphasizing some formal alcohol [treatment] as well." *Id.* at 187, 188. Therefore, "there is a gap in addressing" the individual's issues; her "alcohol issue is more [of] a question mark." *Id.* at 185, 189.

III. Legal Standard

In order to grant or restore an individual's access authorization, the Hearing Officer must find that the grant or restoration "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. §§ 710.7(a), 710.27(a); *see also Dep't of the Navy v. Egan*, 484 U.S. 518, 528 (1988). In order for the Hearing Officer to make this finding, the individual must resolve the security concerns that the DOE identifies in its Notification Letter. *See, e.g., Personnel Security Hearing*, 30 DOE ¶ ____ (June 24, 2008) (Case No. TSO-0586).³

The individual has the burden to resolve the DOE's security concerns because once the DOE finds a security concern, "[T]here is a strong presumption against granting a[n access authorization]." *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990). "[D]eterminations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see also* 10 C.F.R. § 710.7(a) ("Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security.").

The individual must carry or satisfy his or her burden to resolve the DOE's security concerns by presenting evidence to rebut, refute, explain, extenuate, or mitigate the allegations supporting the DOE's security concerns. *See, e.g., Personnel Security Hearing*, 30 DOE ¶ ____ (June 25, 2008) (Case No. TSO-0598).

The Hearing Officer considers "all relevant information, favorable and unfavorable," to issue a decision that is "a comprehensive, common-sense judgment." 10 C.F.R.

³ Hearing Officer decisions issued after December 22, 1994, may be accessed at <http://www.oha.doe.gov/persec2.asp>.

§ 710.7(a). The Hearing Officer shall consider the witnesses' demeanor and credibility, and the authenticity and accuracy of documentary evidence. *Id.* at § 710.27(b). The Hearing Officer shall also consider the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledge and participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavior changes; the motivation of the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *Id.* at §§ 710.7(c), 710.27(a).

IV. Analysis

A. Criterion J and Criterion H

The individual's psychologist and the DOE-consultant psychologist agreed that the individual has shown rehabilitation from her Adjustment Disorder with Anxiety and her PTSD-like symptoms. In particular, the individual, her psychologist, and the individual's significant other convincingly testified that the individual has repaired her relationship with her son so that he no longer causes her stress that triggers her Adjustment Disorder with Anxiety and PTSD-like symptoms. The individual also reduced her stress by taking Prozac and praying.

The individual's psychologist and the DOE-consultant psychologist disagreed as to whether the individual's rehabilitation from her Adjustment Disorder with Anxiety and her PTSD-like symptoms shows that she has rehabilitated herself from the illness that raised the DOE's Criterion J and Criterion H security concerns – Alcohol Abuse. The individual's psychologist testified that the individual's Adjustment Disorder with Anxiety and her PTSD-like symptoms caused her Alcohol Abuse. She concluded that the individual has shown rehabilitation from her Alcohol Abuse because she has successfully treated these "underlying problems" with counseling and a therapy called EMDR. The DOE-consultant psychologist acknowledged that the individual's Adjustment Disorder with Anxiety and PTSD-like symptoms are related to her Alcohol Abuse. But he testified that her Alcohol Abuse requires separate treatment and that she has not shown rehabilitation.

The DOE-consultant psychologist persuaded me that the individual's Alcohol Abuse requires separate treatment. First, the individual's statements regarding her August 2007 drinking suggest that stress was not the sole cause of her drinking (as it was in April 2007, when her son did not graduate high school). That is, although she testified that in August 2007 she drank out of concern for her son, she previously stated in a PSI that she was relaxed and enjoying her day. DOE Ex. 29 (PSI, Sept. 13, 2007, p. 16). Second, the individual's relapse history suggests that her Alcohol Abuse is a free-standing problem that requires specific attention. Third, I find ample support for the DOE-consultant psychologist's opinion that the individual's Adjustment Disorder with Anxiety diagnosis increased the seriousness of her Alcohol Abuse diagnosis.

Further, the DOE-consultant psychologist persuaded me that the individual has not shown rehabilitation from her Alcohol Abuse. At the hearing, the DOE-consultant psychologist stated that to show rehabilitation, the individual must abstain from alcohol while participating in a comprehensive alcohol treatment program. He stated that this treatment program should include AA participation, psychological counseling, and random alcohol testing. He also stated that the individual should participate in this program for a minimum of twelve, and preferably eighteen months. Alternatively, the DOE-consultant psychologist stated in his written evaluation that if the individual attempts recovery without treatment, she must abstain from alcohol for thirty months. Based on the testimony of the individual, her psychologist, and her significant other, as well as the AA attendance sheets that the individual submitted, I find that the individual has abstained from alcohol and participated in counseling with her psychologist since August 2007, and committed to AA in April 2008. *See* Hearing Exhibit 2 (individual's AA attendance sheets, Apr. 21–Aug. 1, 2008). I also find that she is motivated to get well and has an adequate support system through her significant other, her church, and AA. I also note that the individual's co-worker suggested that alcohol is not interfering with her work. Yet, according to the DOE-consultant psychologist, to show rehabilitation she needs eight to fourteen more months of abstinence with treatment or eighteen more months of abstinence without treatment. I therefore agree that the individual is still “early” in her recovery and has a “medium” risk of relapse.

B. Criterion L

The DOE's Notification Letter presents a Criterion L security concern, stemming from the individual's broken promise to the DOE that she will not drink, which the DOE relied upon in restoring her access authorization.

I find that the individual was sincere when she made her promise, but broke it when she suffered an Alcohol Abuse relapse. However, the individual has not presented evidence to mitigate this concern, other than her statement that she would not make the same promise again. She broke her promise two and a half years after she made it. Given her cyclical relapses, because she broke her promise only a year ago (as of the time of the hearing), she has not had enough time to prove that the DOE can trust her statements that she will not abuse alcohol. Also, the individual has not shown rehabilitation from her Alcohol Abuse. Therefore, the individual has not mitigated the DOE's Criterion L concern.

V. Conclusion

For the reasons set forth above, the individual has not resolved the DOE's Criterion J, Criterion H, and Criterion L security concerns. Therefore, I find that the individual's access authorization should not be restored.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

David M. Petrush
Hearing Officer
Office of Hearings and Appeals

Date: November 3, 2008